

STATE OF VERMONT  
DEPARTMENT OF EDUCATION

Special Education  
Case #DP12-27 ( )

Due Process Hearing

**BACKGROUND**

A Due Process Hearing Request was filed in this matter on June 12, 2012. A Pre-hearing Conference was held on July 16, 2012 and a Hearing was held on July 26, 2012, both in Barre, Vermont. The school district (hereafter the "District"), represented by Attorney Sean Toohey, Donald McMahon, Director of Special Services, the Parent and Hearing Officer, Catherine Stern, were present at the Hearing.

**ISSUES**

The following issues were raised at the Hearing:

1. Whether \_\_\_\_\_ is an appropriate placement and the least restrictive placement for the Student; and,
2. If \_\_\_\_\_ is not an appropriate placement or the least restrictive placement for the Student, whether the \_\_\_\_\_ or the \_\_\_\_\_ would be an appropriate and least restrictive placement for the Student.

**FINDINGS OF FACT**

1. During the \_\_\_\_\_ school year, the Student attended \_\_\_\_\_ grade at the District's Middle and Elementary School (hereafter "DMES"). (Stipulated Fact #3; Testimony of \_\_\_\_\_).
2. The Student did well academically in the \_\_\_\_\_ grade and was on the honor roll for the last marking period. (Testimony of \_\_\_\_\_).
3. During the 2010-2011 school year, the student began the \_\_\_\_\_ grade at \_\_\_\_\_ (Stipulated Fact #5; Testimony of \_\_\_\_\_).
4. The Student was evaluated in March of 2011 and met the criteria for \_\_\_\_\_ disability and other \_\_\_\_\_ disability due to \_\_\_\_\_ (Stipulated Fact #1; District Exhibit (hereafter "Dist. Ex.") #8 at 42; Testimony of \_\_\_\_\_).

5. The Student's cognitive ability is in the average range. (Stipulated Fact # 2; Dist. Ex. #8 at 47).

6. \_\_\_\_\_ was the Student's case manager while \_\_\_\_\_ was in the \_\_\_\_\_ grade but was not \_\_\_\_\_'s case manager while \_\_\_\_\_ was in the \_\_\_\_\_ grade at DMES. (Testimony of \_\_\_\_\_).

7. The Student's academic performance declined during \_\_\_\_\_ grade year due to behavioral issues which resulted in, among other things, the Student frequently leaving or being asked to leave the classroom. (Dist. Ex. #12 at 74-75; Dist. Ex. #13 at 76-96; Testimony of \_\_\_\_\_).

8. During the \_\_\_\_\_ school year, the Student transferred from \_\_\_\_\_ to \_\_\_\_\_ Academy, a private school, to complete the \_\_\_\_\_ grade. (Stipulated Fact #6; Testimony of \_\_\_\_\_; Testimony of \_\_\_\_\_).

9. When the Student transferred to \_\_\_\_\_, \_\_\_\_\_ did not have an in District program that would have been appropriate for the Student. (Testimony of Donald McMahon; Testimony of \_\_\_\_\_).

10. The Student completed \_\_\_\_\_ grade year at \_\_\_\_\_ during the \_\_\_\_\_ school year. (Stipulated Fact #7; Testimony of \_\_\_\_\_).

11. CHOICE Academy is a private day school in \_\_\_\_\_, Vermont for approximately children with \_\_\_\_\_ and \_\_\_\_\_ challenges. (Dist. Ex. #8 at 50; Testimony of \_\_\_\_\_).

12. CHOICE Academy has six teachers, a special educator, an education coordinator, two clinician case managers, five interventionists, an academic coordinator, a physical education teacher and an art teacher. (Testimony of \_\_\_\_\_).

13. There were \_\_\_\_\_ children in the Student's class at \_\_\_\_\_ . (Testimony of \_\_\_\_\_).

14. The Student worked on \_\_\_\_\_ skills while at \_\_\_\_\_ and made progress. \_\_\_\_\_ still left the class when necessary to talk to staff but would then go back to class and complete \_\_\_\_\_ work. (Testimony of \_\_\_\_\_).

15. While at \_\_\_\_\_, the Student received 1-1 therapy for one hour per week, group therapy for two hours per week and \_\_\_\_\_ teachers offered behavioral intervention in class throughout the day. (Testimony of \_\_\_\_\_).

16. During the time the Student was at CHOICE Academy for grade, the District developed two programs through its the a and the Program (hereafter ). Testimony of ; testimony of

17. The Student's IEP Team met in September of 2011. Matters discussed at the meeting, included changing the Student's placement from to the District's . Although timely notice was sent to the Parent and the District attempted to contact the Parent did not attend the meeting. (Stipulated Fact #8; Testimony of Dist. Ex. #1 at 1 and 2).

18. The District believed that, because the is a hands on program, it would be compatible with the Student's interests and meet behavioral and academic needs. (Testimony of Dist. Ex. #1 at 2).

19. The Student's IEP Team met in November of 2011, and the matters discussed included changing the Student's placement from to the District's for the grade. (Stipulated Fact #9; District Ex. #2 at 23; Testimony of ).

20. During November of 2011, the Student and the Parent visited the . (Stipulated Fact #10; District Ex. 3 at 29; Testimony of ).

21. The Student's IEP Team met in December of 2011 and discussion included the Parent's and Student's visit to the . (Stipulated Fact #11; District Ex. #3 at 29; Testimony of ).

22. The Student liked the hands on activities at the . The Parent indicated that she might agree to send to the for the next year but she was concerned because it lacked a component. (District Ex. #3 at 29; Testimony of ).

23. The Student's current IEP, the second half of which would run from 8/29/12 to 2/7/13, was finalized on or about January 25, 2012. It states, in part, that the Student's "behavior interferes with ability to make academic progress in a regular school setting" and as a result "needs a therapeutic alternative education program to address emotional needs" with a placement at a separate public or private school. (Stipulated Fact #13; District Ex. # 8 at 41-5; District Ex. #8 at 50; Testimony of )

24. At a March of 2012 meeting of the Student's IEP Team, transitioning the Student from \_\_\_\_\_ to the \_\_\_\_\_ was discussed. (Testimony of \_\_\_\_\_ District Ex. #5 at 32).

25. The District sent the Parent a Form 7a dated May 25, 2012 that explained the District's decision to change the Student's placement from the \_\_\_\_\_ to either the \_\_\_\_\_ or the \_\_\_\_\_ Program. (Stipulated Fact #14; Testimony of \_\_\_\_\_ District Ex. #6 at 37).

26. During the May of 2012 IEP meeting, the Parent and Student stated that they wanted the Student to remain at \_\_\_\_\_. At the meeting, the \_\_\_\_\_ and \_\_\_\_\_ Programs were discussed as well as having the Parent and Student visit the \_\_\_\_\_ Program. (Stipulated Fact #14; Testimony of \_\_\_\_\_ District EX. # 7 at 40).

27. The \_\_\_\_\_ Program is an academic and \_\_\_\_\_ program with approximately 15 students. \_\_\_\_\_ is located in a separate building, 300-400 yards from the District's High School (hereafter "High School"). (Testimony of \_\_\_\_\_)

28. The \_\_\_\_\_ Program staff includes four teachers, two \_\_\_\_\_, a full time \_\_\_\_\_, one special educator, paraprofessionals, and an administrator who oversees the program. The teachers are four of the strongest teachers at the High School, all of whom have indicated that they would be returning to teach at \_\_\_\_\_ in the fall. (Testimony of \_\_\_\_\_ Testimony of \_\_\_\_\_).

29. The \_\_\_\_\_ program is successful because it has behavioral plans with clear expectations as well as clear academic expectations. \_\_\_\_\_ has the same kinds of therapeutic components as \_\_\_\_\_ (Testimony of \_\_\_\_\_)

30. Students at \_\_\_\_\_ have access to the High School's vocational resources, including employment specialists. They may participate in its extra-curricular programs, including sports and; where appropriate, may enroll in regular education classes at the High School. (Testimony of \_\_\_\_\_).

31. The Parent and the Student have not, to date, visited the \_\_\_\_\_ Program. (Stipulated Fact #15; Testimony of \_\_\_\_\_, Testimony of \_\_\_\_\_)

32. The \_\_\_\_\_ Program would meet the Student's \_\_\_\_\_ and academic needs. Placement there would be appropriate for the Student and would be the least restrictive environment for \_\_\_\_\_ (Testimony of \_\_\_\_\_ Testimony of \_\_\_\_\_).

## CONCLUSIONS OF LAW

Issue #1 - Is \_\_\_\_\_ is an appropriate placement and the least restrictive placement for the Student?

In considering this issue, the terms “appropriate” and “educational placement” must be examined. The law has established that in providing an “appropriate” placement, a school district is not required to “maximize the potential” of a disabled child. However, a school district is required to provide a disabled child with access to public education in a “meaningful way”. *Mr. and Mrs. P. v. Newington Bd. Of Educ.*, 546 F.3d 111, 118-119 (2d Cir. 2008). The issue of appropriateness depends on whether a placement is “reasonably calculated to enable the child to receive educational benefits” *Gagliardo v. Arlington Cent. Sch. Dist.*, 489 F.3d 105, 113 (2d Cir. 2007) (citations and quotation marks omitted).

The second term, “educational placement”, “refers to the general educational program – such as the classes, individualized attention and additional services a child will receive – rather than the ‘bricks and mortar’ of the specific school.” *T.Y. v. New York City Bd. Of Educ.*, 584 F.3d 412, 419

In the case under consideration, no evidence was presented at the Hearing by either party to support a finding that \_\_\_\_\_ was not an appropriate placement for the Student. The District concedes that it did not have an appropriate program for the Student and consequently, \_\_\_\_\_ was placed at \_\_\_\_\_ for a portion of \_\_\_\_\_ grade year. The Parent and the Student want the Student to remain at \_\_\_\_\_ for the 2012-2013 school year. In addition, the evidence supports a finding that \_\_\_\_\_ met the Student’s needs and that \_\_\_\_\_ made progress during \_\_\_\_\_ and \_\_\_\_\_ grade years. \_\_\_\_\_ was an appropriate placement for the Student during the 2010-2011 and 2011-2012 school years.

The second question raised by issue #1, is whether \_\_\_\_\_ would be the least restrictive environment (hereafter “LRE”) for the Student. Before deciding whether \_\_\_\_\_ is the LRE, it is necessary to consider the appropriateness of the \_\_\_\_\_ and \_\_\_\_\_ Programs and then to examine the programs, including \_\_\_\_\_, which have been deemed appropriate to determine which is the LRE.

Issue #2 – Would the \_\_\_\_\_ and/or the \_\_\_\_\_ Program be an appropriate educational placement and the least restrictive environment for the Student?

Initially, the District believed that the hands on approach of its \_\_\_\_\_ would be compatible with the student’s interests and meet \_\_\_\_\_ and academic needs. The Student visited the \_\_\_\_\_ and liked that it was hands on. However, the Parent was concerned because \_\_\_\_\_ did not have a \_\_\_\_\_ component. In addition, the Student’s IEP for the first half of the 2012-2013 school year states that \_\_\_\_\_ requires a “\_\_\_\_\_ alternative educational program to address \_\_\_\_\_ needs”. Without a \_\_\_\_\_ component, the \_\_\_\_\_ would not provide the Student with access to an education in a “meaningful way” as the law requires. *Mr. and Mrs. P. v. Newington Bd. Of Educ., Supra.* at 118-119. Thus, the \_\_\_\_\_ is not an appropriate placement for \_\_\_\_\_

The District’s \_\_\_\_\_ Program is, by contrast, an academic and \_\_\_\_\_ program. Its teachers, four of the strongest from the High School, two \_\_\_\_\_, one special educator and paraprofessionals, are able to meet the needs of the students, approximately fifteen, with a combination of \_\_\_\_\_ and academic expertise. The components of the \_\_\_\_\_ Program are similar to those of \_\_\_\_\_ and would meet the Student’s \_\_\_\_\_ needs as specified in IEP. It would also provide the Student, who in the \_\_\_\_\_ grade made the honor roll, with academic challenges. The \_\_\_\_\_ Program would provide the Student with “meaningful access to education” and “enable [ \_\_\_\_\_ ] to receive educational benefits”. *Id.* at 118-119; *Gagliardo v. Arlington Cent. Sch. Dist., Supra.* at 113. \_\_\_\_\_ is, therefore, an appropriate program for the Student.

The term “educational placement” when applied to the Student attending \_\_\_\_\_ or the \_\_\_\_\_ Program refers to general program that is offered and not to the school itself or its location. Given the Student’s needs and the type of programs offered, both \_\_\_\_\_ and \_\_\_\_\_ are appropriate placements for the Student. The remaining issue is to determine which of these appropriate placements would provide the least restrictive environment.

The Individuals with Disabilities Education Act requires that disabled children be educated with nondisabled children to the maximum extent appropriate and that “special classes, separate schooling, or removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of the child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” 20 U.S.C. §1412(a)(5)(A); VSER §2364.1(a). A school district is required to “ensure that a continuum of alternative placements” including “instruction in general education classes, special classes, special schools, independent schools, home instruction and instruction in hospitals and residential facilities” is available to children with IEPs. VSER §2364.2(a) and (b)(1). When determining the LRE of a placement, the law requires a balance between what is appropriate for a child and what is the LRE. The LRE which must also be appropriate begins at the end of the continuum that brings a child as close as possible to regular classes in the child’s public school.

As discussed above, both \_\_\_\_\_ and the \_\_\_\_\_ are appropriate placements for the Student. A determination of which these of programs is the LRE requires a review of the continuum of placements. \_\_\_\_\_ is a private, day school in Barre, Vermont with no connection to the District’s schools. As such, \_\_\_\_\_ is an independent school on the continuum of educational placements. The \_\_\_\_\_ is a special school within the District schools that is located in a separate building very close to the District’s High School. Academic classes at \_\_\_\_\_ are taught by teachers from the High School. Students at \_\_\_\_\_ have access to vocational resources, extra-curricular programs, including sports, and, when appropriate, regular education classes at the High School. Because \_\_\_\_\_ students are permitted to go to the High School and the schools are in close proximity, interaction between \_\_\_\_\_ students and non-disabled students at vocational resources, curricular activities and some classes is likely. It is clear that on the continuum of educational placements, \_\_\_\_\_ has a more restrictive educational environment than the \_\_\_\_\_ Program. Thus, the \_\_\_\_\_ would provide the Student with the least restrictive environment.

## CONCLUSION


and the Program are both appropriate educational placements for the Student. However, unlike the is not the least restrictive environment for the Student. Because the program is both an appropriate educational placement and the least restrictive environment, it is the program the Student should attend.

## ORDER

Based on the foregoing, it is hereby ORDERED that:

At the beginning of the 2012-2013 school year, the Student shall be transitioned from to the and shall remain there for the duration of current IEP.

Dated at Hartland, Vermont this 15<sup>th</sup> day of August 2012.

  
Catherine C. Stern  
Hearing Officer